

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

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Chief Deputy

June 20, 2005

Richard W. Sprott  
Executive Secretary  
Utah Air Quality Board  
150 North 1950 West  
Salt Lake City, Utah 84114

Dear Mr. Sprott,

You asked me to provide information concerning the State variance provisions in Utah Code Annotated Section 19-2-113 that are reflected in the Utah Administrative Code at UAC R307-102-4 and the issue of consistency with the federal Clean Air Act, Section 110(i) (42 U.S.C. Section 7410(i)).

When the original Utah Air Conservation Act was enacted in 1967, it contained language that is substantially the same as the current Utah Code Annotated Section 19-2-113 governing variances (1967 Session Laws, chapter 47, Section 11). This variance language underwent some minor amendments in 1975 (1975 Session Laws, Chapter 71, Section 3). The language was further included in the 1981 recodification of the Utah Health Code (1981 Session Laws, Chapter 126, Section 14). Other minor amendments were made to the language in 1987 (1987 Session Laws, Chapter 161, Section 57) and when the department of Environmental Quality was created in 1991 the variance language became part of the current Utah statute, Utah Code Annotated Section 19-2-113 (1991 Session Laws, Chapter 112, Section 51). Consistent with the statutory language, the rules of the Board have historically reflected and currently reflect that variances are authorized under Utah law (see UAC R307-102-4).

Section 110(i) of the federal Clean Air Act was added to the federal law by the 1977 amendments to the Act. Section 110(i) provides that except for a number of listed exceptions, "no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator."

Because of issues raised by EPA concerning the consistency between the Utah variance provisions and Section 110(i) of the federal Clean Air Act, the Utah rules were amended in

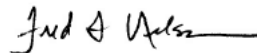
November, 1979, to add a restriction on the granting of variances -- allowing the granting of variances as provided by law "unless prohibited by the Clean Air Act". That language has existed in the Utah rules since that date and is currently a part of Utah Administrative Code R307-102-4.

The ability of the Board to establish a regulatory constraint on a statutory variance authorization rests, in part, in Utah Code Annotated Section 19-2-104(3)(q) which authorizes the Board to "meet the requirements of federal air pollution laws". Consistent with that authority, the Board has limited its statutory authority to grant variances only in circumstances where it is not prohibited by federal law.

The variance rule and its limitation were included in numerous State Implementation Plans and revisions submitted to EPA since 1979. EPA has approved the language as part of those implementation plans and revisions to those plans. The Utah Air Quality Board and the Utah Division of Air Quality have attempted to properly implement the variance rules consistent with federal law over the years the rules have been in place.

The Attorney General's office has historically concluded and continues to take the position that UAC R307-102-4 and its limitation on granting variances is consistent with Section 110(i) of the federal Clean Air Act.

Sincerely,

A handwritten signature in dark ink, appearing to read "Fred G. Nelson", with a horizontal line extending to the right.

Fred G Nelson  
Counsel, Utah Air Quality Board  
Assistant Attorney General